
Expanded Participation Model: Alternative for Somalia's 2020 One-Person One-Vote Plan

Executive Summary

On 21 February 2020, the President of Somalia, Mohamed Abdullahi (Farmaajo), signed into law the long-awaited electoral bill that has been in the making for years. The leaders of the Federal Government of Somalia (FGS) celebrated the signing of the bill as a historic achievement, because the law should, in theory, allow citizens to directly elect their representatives in the parliament for the first time since 1969.¹ Moreover, the law was designed to be implemented during parliamentary election scheduled for later this year, and presidential election early next year. However, it is becoming abundantly clear that applying the new law to the upcoming electoral cycle would be easier said than done.²

In addition to the lack of political consensus among key stakeholders³, the law still has major deficiencies in a number of areas. They include assigning seats to constituencies, representation for Somaliland and Banadir, ensuring a women's quota and clarifying the role for political parties. Additionally, the time remaining from the end of the mandate of the Farmaajo administration is too short to agree and finalize all aspects of the upcoming election.

Insecurity remains a pervasive problem across the country, while the financial envelope needed to organize a universal suffrage election would be too big for the FGS and Federal Member States (FMS).⁴

Moreover, the technical preparation required for a universal suffrage election is also not available. The new law, which infuses modern democratic norms with traditional power-sharing principles, calls for a biometric system to be used. It will be difficult, if not impossible, for the National Independent Electoral Commission (NIEC) to raise the funds needed, purchase the equipment and develop the capacity to operate it within the eight months remaining before the election.

Given the short amount time left, stakeholders must find common ground on the election model. The unintended—or perhaps the intended—consequence of failing to do so is a term extension for the current administration. As we noted in our [election paper](#) last year, extending the mandate of this administration will not only reverse crucial gains made in the areas of peace-building and state-building since the establishment of the Third Republic in 2000, but could also erode the legitimacy of the FGS, sparking electoral violence and further disintegrating the country.⁵

1 Somali President Signs Historic Election Bill Into Law; <https://bit.ly/3flu6Et>

2 The National Independent Electoral Commission (NIEC) is scheduled to tell parliament on 27 May 2020 whether it can conduct a one-person one-vote election.

3 In our last election paper (Somalia: In Search of a Workable 2020 Electoral Model; <https://bit.ly/2LpdXFI>), we defined stakeholders as: the FGS, FMSs and registered political parties.

4 The FGS did not, in the last budget, allocate funds for the election and neither did the member states.

5 Since 2000, holding elections on time and transferring power at the end of each mandate has become sacrosanct and non-negotiable and it would be anathema for the Farmaajo administration which has been tasked with ushering in one-person one-vote to turn around and ask for an unconstitutional term extension.

For those reasons, a sensible way forward for both Somali stakeholders and international partners would be to focus on a political agreement among relevant parties and settling on a realistic and citizen-centric election model. Our research and analysis indicates that a universal suffrage election that enjoys broad-based support among the Somali people and meets minimum standards of fairness and freedom is highly improbable – if not impossible – during this electoral cycle.

A viable, and perhaps the only remaining realistic strategy in the remaining eight-month timeframe before Farmaajo's mandate expires, would be embracing the next best electoral model. It should expand voter participation while ensuring the integrity of the process. Moreover, it should take place at least in three cities in each FMS. However, as we argued in our last paper, any adopted electoral model would have to meet two principles: first, it must lay the foundation for a universal suffrage election and second, all relevant stakeholders must support it.

This policy brief examines the new electoral law and analyses the gaps, challenges and impediments to its implementation. Moreover, it offers an alternative electoral model that draws on key elements of the new electoral law and facilitates political agreement among key stakeholders.

Evolution of the Electoral Law

Within months of being elected, the FGS formed a committee of experts to look into electoral systems. The Ministry of Interior led a technical committee, consulted with experts and chose Closed-List Proportional Representation (CL-PR) as the most suitable system for the country. Based on that, the committee prepared a draft electoral law.⁶

From the outset, the FGS was too slow to engage key stakeholders. It initiated its first meaningful political negotiations regarding the 2020 political dispensation 16 months after it came to power. In June 2018, the political leaders of the country (the FGS, the presidents of five of the federal member states and the late governor of Mogadishu) met in Baidoa and announced that they had agreed on an electoral model – making the country one giant electoral district using CL-PR.⁷

Unfortunately, the agreement collapsed before the ink had dried. The presidents of the FMS met in Kismayo in September 2018 and issued a conflicting statement in which they accepted the CL-PR but called for a multidistrict arrangement.⁸ This was not new, as the country had used multi-member districts and CL-PR in the past. The 123-member parliament of the 1960s was elected from 42 political districts.⁹ Against that backdrop, the FGS passed a new draft bill through its Council of Ministers without consulting key stakeholders or the FMS.¹⁰ The new bill contained surprising clauses that would allow the president to emerge from the party or coalition that wins the majority in parliamentary elections. This was a clear violation of the provisional constitution and the established norms since the 1960s where the president was always elected by the parliament.¹¹ Despite widespread rejection of the draft bill because of its unconstitutionality,¹² the FGS presented it to parliament for adoption.

This led to a stalemate and poisoned the political atmosphere. The speaker of the lower chamber of parliament, Mohamed Mursal, appointed a 15-member special ad hoc committee to review the cabinet proposal on 20 July 2019.¹³ The committee rejected the draft electoral law as presented by the cabinet and restored parliament's exclusive power to elect the president.

6 Interview with a government official. Nairobi. September 2019.

7 Somalia's National Security Committee met in Baidoa on 5 June 2018 and issued a communiqué in which they said they had agreed on the electoral model of the country; see <https://villasomaliamedia.gov.so/soomaali/war-murtiyeedka-golaha-amniga-qaranka/>

8 See: <https://www.caasimada.net/akhriso-war-murtiyeedka-shirka-kismaayo-maamul-gobleedyada-oo-xiriirka-u-jaray-dowladda-dhexe/>

9 The Somali parliament harmonized the two different electoral laws in 1964. See Law No. 4 (Jan 1964). Maarten Halff has compiled all of the electoral laws in an edited volume that is available electronically.

10 See: <https://www.radiodalsan.com/akhriso-xeerka-kheyre-u-gudbiyay-baarlamaanka-ee-xulida-guddiga-agaasinka-bangiga-dhexe/>

11 See: Article 12 of the draft bill the Council of Ministers approved and presented to parliament.

12 The Council of Ministers approved the draft bill even though it was rejected by various stakeholders including political parties. For the BBC Somali coverage, see: <https://www.bbc.com/somali/war-48149785>

13 The speaker of the parliament announced that he had appointed an ad hoc committee that would review the cabinet proposal. The committee consisted of 15 members, and they were tasked with providing recommendations to the parliament. See: <https://goobjoog.com/english/federal-parliament-appoints-an-interim-committee-to-amend-the-national-election-law/>

Furthermore, the committee reintroduced Somalia's clan power sharing formula, known as 4.5, arguing that this system forms the basis of Somali society.¹⁴ Crucially, the committee replaced the CL-PR system with a First-Past-the-Post (FPP) model that divides the country into 275 clan constituencies—the same number of seats as in the lower house of parliament.

More importantly, the parliamentary committee report underlined that a one-person, one-vote election was not possible during this electoral cycle, citing a litany of outstanding issues, such as the review of the provisional constitution, amending the citizenship law, the completion of the national census and the demarcation of the boundaries of the FMS and districts.¹⁵ This was a major blow to the ambitions of President Farmaajo who wanted to bypass those thorny problems by asking the citizens to directly elect the president.

The lower house of parliament accepted all the committee recommendations, prepared a new electoral law and enacted it on 28 December 2019. The upper chamber also passed this draft, and the president signed the bill into law on February 2020. The Council of Ministers (more than 70% of whom are members of parliament from the lower house) who initially voted for the 'President's Draft,' voted for the new bill which stands in stark contrast to the first one.

Analysis of the Electoral Law

In its 58 articles, the electoral law aims to administer free, credible, independent and legal one-person, one-vote parliamentary elections at the federal level. It affirms that every citizen has the right to elect and be elected without discrimination.¹⁶ At the same time, and in line with the Articles 64(3) and 72c of the provisional constitution, the law states that it will maintain the existing power-sharing principles among Somali clans and groups.¹⁷ These two foundational principles are inherently contradictory. The law says that, "until there is the census for the whole country that can determine seat assignment, the election will take place wherever possible while maintaining the power-sharing that the Somalis have agreed."¹⁸ This codifies the 4.5 clan formula into law, potentially setting a dangerous precedent for future electoral dispensations.

Bernard Grofman and Arend Lijphart contend that any electoral law must include an electoral formula (plurality, majoritarian, proportional or mixed); the ballot structure (electing parties or individual candidates); the size of the legislature; the threshold the parties must meet; and, most importantly, the magnitude of the district (the number of seats in a district).¹⁹ The electoral law addresses all of these five aspects.

- First, the electoral system will be a "majoritarian system of the Single Member Plurality" based on the "First Past the Post model".²⁰ Although the law mixes the two types of Single Member Plurality systems, its intention is clear. Somalia would use the first-past-the-post model of the Single Member Plurality system.²¹

14 See: The Parliamentary Committee for the election recommendation available here https://www.hiiraan.com/news4/2019/Nov/166268/somalis_want_a_winner_takes_all_electoral_system_parliamentary_report.aspx

15 See the report of the Special Committee of Parliament issued on 19 November 2019. (Warbixinta Guddiga ee Sharciga Doorashooyinka Qaranka ee Heer Federaal oo u gudbaya akhrinta 2aad; <https://bit.ly/3cvsPOJ>)

16 Article 4(3).

17 Article 4(5) of the Electoral Law.

18 Article 12(3) of the Electoral Law

19 Bernard Grofman and Arend Lijphart, *Electoral Laws and Their Political Consequences*, vol. 1 (New York: Algora Publishing, 2003).

20 Article 10(1).

21 Through the upcoming revision, the lawmakers can correct this minor mistake. In the political science literature, the FPTP and the majoritarian systems are distinct. FPTP is when the candidate with the most votes wins the seat while the majoritarian system requires more than 50% to win a seat. Normally, if one candidate does not secure more than 50% the top two candidates would face each other in a run-off election. Simply, the term "majoritarian" in the law must be deleted.

- Second, the electoral law states that the ballot structure will be based on the candidate even though parties will ostensibly play a role. For instance, the law requires that each political party compete for 50% of the seats in the two chambers even though the political parties law has not yet been finalized.²²
- Third, the electoral system requires political parties to meet a 4% threshold, or 13 members, from the two chambers.²³ The parties that fail to secure this magic figure would cease to exist as parties, but their elected members would remain in the parliament as independents or join another party.
- Fourth, the size of the legislature remains the same: 275 seats for the lower house and 54 seats for the upper chamber.
- Finally, in terms of district magnitude, since the electoral law adopted the first-past-the- post model, each member of the lower house will be elected separately²⁴, and only the member of the clan for which the seat has been allocated in the past could compete for it.

In contrast, article 12(6) of the electoral law clearly states that the citizens of each region of the FMS will directly elect the senators. This means that each FMS will assign seats to its sub-regions. For instance, Jubaland consists of three regions. In theory, it should get nine senate seats where the citizens of each region elect their three senators.

In addition to ensuring that members of parliament elect the president, lawmakers have also further limited the president's most important exclusive power – to appoint a prime minister. The new law requires the president to appoint the prime minister from the party (or coalition) that can muster a majority in the parliament.

In doing so, they have created a greater incentive for parties to work together to secure a majority which no party can win in a deeply polarized society like Somalia. At the same time, this arrangement is a recipe for unstable governments since parties struggle to maintain majorities for variety of reasons.

The new legislation aims to address other corrosive problems in Somalia's political system, one of which is foreign money. The law prohibits candidates receiving money from foreign donors for the purpose of elections, although the implementation of this would be exceedingly difficult.²⁵ Moreover, the law mandates that a biometric registration system be deployed to register voters.²⁶ While this clause is a step in the right direction, the absence of a rudimentary infrastructure to support such cutting edge technology renders the demand impractical. Neither the federal government, nor the member states, have a reliable identification system. And registering millions of people would take more than a year if all of the necessary equipment was readily available, which it is not. According to experts, Biometric Voter Registration (BVR) is expensive and requires 18-24 months preparation time before the election.²⁷

On the important matter of dispute resolution, the electoral law provides two avenues: the Supreme Court, which would adjudicates complaints against the administrative decisions of the NIEC, and the Constitutional Court, which would adjudicate on cases involving voter participation and results of election within 14 days.²⁸ However, the FGS has not yet established the Constitutional Court.

Finally, the law requires the NIEC to announce its plan for holding the election on time (or its inability to do so) at least 180 days before the end of the term of the parliament.²⁹ That date falls on the 27 May 2020. If the NIEC cannot present the plan for holding the election on time, the two chambers of the parliament will decide on what to do in a joint session.³⁰

22 Article 10(2) of the Electoral Law

23 Article 12(9) of the Electoral Law

24 Article 10(2) of the Electoral Law

25 See Article 30(7) of the Electoral Law.

26 See Article 16(4) of the Electoral Law.

27 See Wolf, Peter, Abdul Alim, Brown Kasaro, Pontius Namugera, Mohammed Saneem, and Tamir Zorigt. *Introducing Biometric Technology in Elections*. International Institute for Democracy and Electoral Assistance (International IDEA), 2017. P. 32.

28 Article 50(3) of the Electoral Law

29 Article 13(3) of the Electoral Law

30 Article 53(3) of the Electoral Law

Key Deficiencies in the Law

The signing of the electoral law is indeed a tangible achievement in Somalia's quest to fully democratize and shed its archaic electoral system. For a country that has not held a universal suffrage election for 50 years, this law lays the foundation for a return to the golden era of Somalia when it was Africa's first real democracy.³¹

However, the law has left many questions unanswered, forcing the leaders of both houses of parliament to form an ad hoc committee to address the four main deficiencies in the bill along with a number of other tangential issues.

First, the law does not establish electoral constituencies for the 275 seats in the lower house, a fundamental requirement in representative democracies. Instead, the law stipulates that each of the 275 seats will remain the de facto property of the sub-clan that currently holds the seat. In other words, parliament has for the first time codified the 4.5 system, which until now had been an unwritten rule, into the law of the land. In doing so, parliament has dug itself – and the Somali people – into a deeper hole in the often, complex intersection of clan and politics. On the one hand, parliament appears to have mollified the anxieties of many groups by retaining the 4.5 system, but that very system represents a direct contradiction to the norms of representative democracy where seats are not the exclusive property of one group. On other hand, the law envisions a process whereby citizens will directly elect their representatives – a normative practice in any democracy.

Second, the law deferred the thorny issues of the parliamentary seats representing Somaliland and Banadir, each with a distinct challenge. More than 50 MPs in both houses of parliament represent Somaliland although they are not allowed to visit their constituencies (because Somaliland declared unilateral secession in 1991 and remains unrecognized by any country).

In 2016, those MPs were conveniently selected/elected in Mogadishu, which raised legitimate questions about their real influence in Somaliland, and it exposed them to the strong-arming of the incumbent President, Hassan Sheikh Mohamud.

For Banadir, due to its status as the nation's capital and the fact that it is not a federal member state, Mogadishu did not have a regional electoral management body in 2016. That meant that, aside from the Somaliland MPs, only a few other representatives were elected in Mogadishu, even though a significant number of MPs in both houses live in the capital. Perhaps more ominously for Mogadishu, it does not have a single member in the 54-seat upper house (senate), despite the fact that the provisional constitution states unequivocally that each of Somalia's 18 regions (prior to the civil war) should get an equal number of senators.³² Moreover, there is a growing chorus of voices calling for the capital to be given federal member state status, though the provisional constitution stipulates that the final status of Mogadishu should be negotiated in parliament—something that has proven too sensitive so far.³³

Third, the law doesn't lay out how the 30% quota of women should be secured. In 2016, women were 24% of the 329 MPs in both houses, despite inordinate pressure by the international community. In a deeply patriarchal society such as Somalia, the quota of women can only be secured through legalized and enforced allocation of seats.

Fourth, the law envisions a role for political parties in the next electoral cycle. However, parliament has yet to pass the equally important political parties' law that would regulate the role of political entities in an election. In fact, the NIEC has so far registered 82 parties on a temporary basis pending this legislation.³⁴ While the growth of political parties is a very positive trend in Somalia's deeply fractured society, the absence of a political parties law will continue to undermine their existence. Perhaps that is why President Farmaajo and Prime Minister Hassan Khaire have yet to establish their long-awaited "mega party", which they announced years ago.

31 See: Abdi Ismail Samatar. *Africa's First Democrats: Somalia's Aden A. Osman and Abdirazak H. Hussien*. Indiana University Press, 2016.

32 See: Article 72 of the Draft Constitution of the Federal Government of Somalia. Available here https://www.parliament.gov.so/images/Downloads/Dastuurka_ku_meelgaarka_SOM_03092012-1_2.pdf

33 Article 12(6) of the Electoral Law explicitly says the Federal Parliament will produce a resolution that addresses Banadir representation.

34 See: <https://niec.so/en/parties/registered-political-parties>

In a nutshell, no free and fair election can take place without this piece of legislation to regulate the parties.

Impediments to Implementing the Electoral Law

There are at least seven main challenges to implementing the law for the upcoming electoral cycle:

First challenge: although the law passed both chambers of parliament with significant majorities, it lacks the political support of key stakeholders, including at least two of the five member states and leading opposition parties.

Puntland and Jubaland have publicly announced that the law will not be implemented in their states.³⁵ Both states have also closed the offices of the NIEC, and they want that state electoral bodies should manage elections at the local level.

Second challenge: the amount of time remaining from the mandates of the parliament (less than six months) and that of the president (less than eight months) is demonstrably insufficient to make all the necessary changes to the law, and make preparations for a universal suffrage election in which potentially millions of people would vote across the country. The implementation of the electoral law would take years, not months, and requires considerable preparation.

Third challenge: the overall security situation remains highly volatile, and significant parts of the country are still under the control of the extremist group Al-Shabaab. Securing a nationwide election for a country as big and sparsely populated as Somalia would require tens of thousands of security personnel deployed across key areas. Although the FGS has formed a “security committee” to assess the situation, the committee would be unwelcome in Puntland and Jubaland due to their adversarial relationship with the FGS.

Fourth challenge: the financial resources required to successfully implement such a universal elections would be in excess of \$100 million—far more than the FGS and FMS can afford at the moment. Although it was a common knowledge that an election would take place in 2020, the FGS has not allocated money in the 2020 budget, except for the operating costs of the NIEC.

The Election Commission alone requires about \$53 million For the 2020 election. The international community has pledged support for the election, but that would be woefully inadequate.

Fifth challenge: the technical preparation required to successfully organize a universal suffrage election is simply unavailable at the moment. For the integrity of the election to be impregnable, especially in context where electoral fraud and corruption is so rampant, the NIEC would need cutting edge technology, including a biometric system, to register voters and organize them along electoral constituencies. Somaliland has been developing such systems for nearly 20 years, and allegations of fraud are still commonplace.

Among many challenges, the vast of majority of Somalis do not have any identification, and the country does not have a national or state ID system, making the process of registration exceedingly difficult.

Sixth challenge: the electoral law envisions that the NIEC would conduct all of the elections across the country – Somaliland and the areas that Al-Shabaab controls aside. That would almost certainly be unacceptable to some member states, namely Puntland and Jubaland, although others would also want to manage the elections in their state. This would require further negotiation between the FGS and member states.

Seventh challenge: the impact of COVID-19 will likely be acutely felt in Somalia in the coming months, potentially devastating an already vulnerable population. Although the current number of confirmed cases of COVID-19 remain comparatively low, the potential for an outbreak is very high as very few people are adhering to social distancing instructions. In the event of a major outbreak, COVID-19 will almost certainly wreak havoc on the country, forcing stakeholders to revisit the timeliness of the election. Of more than a dozen elections scheduled in Africa in 2020, only Ethiopia officially delayed its general election though there are reports that Uganda might also delay its presidential elections scheduled for early next year.

³⁵ See: communiqué of Puntland Consultative Forum in March 2020. Available at <https://puntlandpost.net/2020/03/19/communique-of-puntland-consultative-conference/>

Expanded Participation Model

Drawing on key elements of the electoral law, we propose an alternative model for the upcoming elections that we call an **Expanded Participation Model (EPM)**. Here is how it would work:

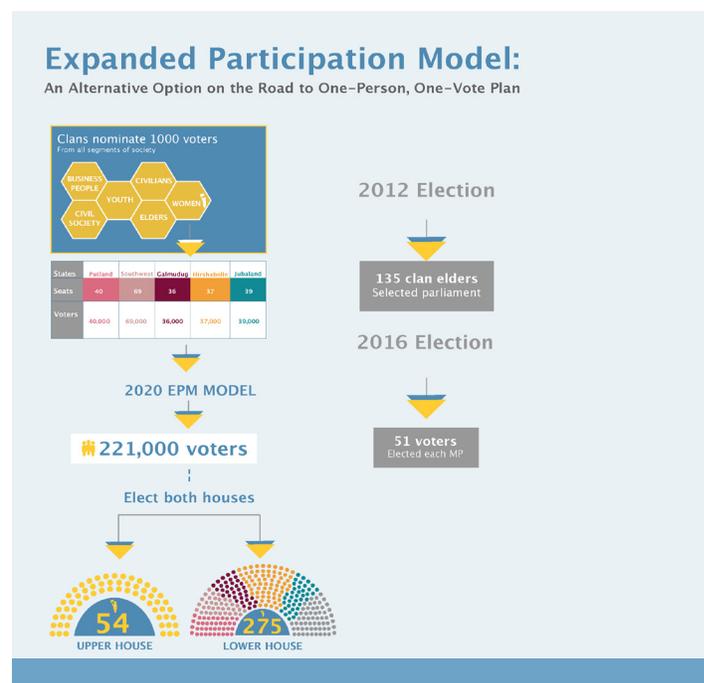
- Since the current electoral law allocates each seat to the clan that currently occupies it, each of these clans would nominate 1,000 electors to vote in the next election.
- Instead of those 1,000 clan representatives voting for their own MP, all voters from each FMS will be merged as one voting block.
- Southwest has 69 MPs. Under the EPM it will have 69,000 voters from all communities across the state.
- These 69,000 voters will therefore vote for each member of parliament. In contrast, last election each MP was elected by a mere 51 clan electors.
- Similarly, Puntland will have 40,000 electors voting for each of its 40 seats.
- Galmudug will have 36,000 electors voting for each of its 36 parliamentarians.
- Hirshabelle and Jubaland will each have 37,000 and 39,000 voters, respectively.

This EPM model would markedly increase the overall number of voters for the 275 seats in the lower house from 14,025 four years ago to 221,000 in 2020. The 1,000 voters for each seat will be made up of all segments of society, including elders, women, youth, civil society, business people and ordinary citizens. Clan elders in conjunction with political parties, the NIEC and their regional counterparts would work out fair and transparent selection modalities for the 1,000 electors.

The EPM envisages that the more people who vote, the stronger the integrity of the election and the less money changing hands. The proposed EPM option will also help to fulfil the quota of women in parliament as well as Somaliland representation.³⁶

The delegates would be spread across three cities in each state (i.e. Dhuusamarreeb, Abduwak and Galkayo for Galmudug or Galkacyo, Garowe and Bosaso for Puntland). This would significantly improve the integrity of the election and give many citizens in each state the chance to elect their representatives in a way that promotes regionalism over clannism.

We also propose that political parties play a role in the upcoming election, regardless of whether parliament passes the political parties' law. Their temporary status gives them sufficient legal ground to participate. Parties would submit their candidates for all (or at least 50% of the seats as the law requires) of the 275 seats of the lower house as well as each of the 54 senate seats to the NIEC and other state-based electoral management bodies. The political parties would also help elders and national and regional electoral parties to select the 1,000 clan voters for each seat. On election day, the party affiliation of candidates for the upper and lower houses would be printed on the ballots so that the voter knows the person and party he or she is voting for.



Upper House Elections

As per the provisional constitution, we propose that the regional voters who elect the lower house MPs should also choose the senators. Contrary to the 2016 process in which regional leaders proposed three candidates to their regional legislature, we recommend any qualified candidate be allowed to run for the upper house seats in 2020 – as long as they are running on a political party ticket and are from the community to which the seat is assigned.

³⁶ Parties could discuss and agree – with help of the NIEC – which FMS each Somaliland parliamentary seat will contest.

Conclusion

There is no doubt that Somali citizens deserve a universal suffrage election. However, their leaders wasted so much time over the past three years and have not prepared the ground for elections. However, the failure of the FGS to seek political consensus should not be used as an excuse to delay the election. That said, the Somali people recognize that elections are not events, but a process that requires broad consultation and sufficient preparation.

Universal suffrage should remain an overarching objective towards which all stakeholders work hard. But the focus should now shift towards a political agreement among key stakeholders (the FGS, members states and registered political parties) for the purpose of identifying a workable electoral model for the upcoming elections.

This paper has offered a concrete option – the Expanded Participation Model (EPM).

Recommendations

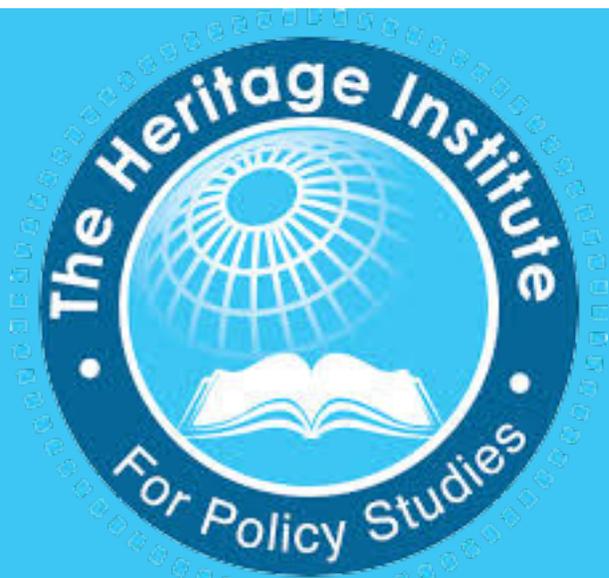
1. Somalia's key stakeholders should urgently engage in a constructive dialogue to identify a workable electoral model for this cycle. The stalemate among the key stakeholders represents a serious threat to the gains made over the past two decades, and to the nation's peace-building and state-building agenda.

2. The FGS should show leadership by convening a high-level dialogue with all of the stakeholders with the view to breaking the stalemate and seeking common ground.

3. The stakeholders should sign a commitment that this election will be the last indirect election, and that universal suffrage is a paramount right of the Somali people for the next elections in 2025.

4. Stakeholders should negotiate on the technicalities of ensuring the quota of women in both houses as well as representation for Banadir and Somaliland.

5. The international community, through UNSOM, should facilitate a dialogue among the key stakeholders as necessary. The UN Security Council should impose sanctions on stakeholders who refuse to engage in good faith in the dialogue about fair elections.



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